

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

17-MJ-5112 (MJR)

KEVIN MYSZKA,

Defendant.

**MOTION TO ADJOURN THE RULE 48(b) DISMISSAL DATE AND FOR
ADDITIONAL EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT**

THE UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney, Brendan T. Cullinane, Assistant United States Attorney, of counsel, hereby moves the Court for an adjournment of the Rule 48(b) dismissal date set for April 2, 2018, and for additional exclusion of time under the Speedy Trial Act. Counsel for the defendant, Terrence M. Connors, Esq., joins in the relief sought herein.

DATED: Buffalo, New York, March 30, 2018.

JAMES P. KENNEDY, JR.
United States Attorney

BY: s/BRENDAN T. CULLINANE
Assistant United States Attorney
United States Attorney's Office
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AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

BRENDAN T. CULLINANE, being duly sworn, deposes and states:

1. I am an Assistant United States Attorney for the Western District of New York and assigned to my office's case file in the above captioned matter. This affidavit is submitted in support of the government's motion to adjourn the Rule 48(b) dismissal set for April 2, 2018, and for additional exclusion of time under the Speedy Trial Act. The adjournment will also give counsel for the defendant, Terrence M. Connors, Esq., sufficient time to provide the effective assistance of counsel.

2. On February 26, 2018, the Court granted the parties' motion to adjourn the 48(b) date and scheduled April 2, 2018 as the 48(b) date in this matter. See Doc. Nos. 45-46.

3. Since that date, the parties have jointly requested a change of plea hearing date before the Honorable Richard J. Arcara, United States District Judge. The Court has tentatively scheduled May 2, 2018, at 2:00 p.m. for the parties to appear before Judge Arcara for the change of plea hearing.

4. The government, with the consent of the defendant's counsel, now moves to adjourn the Rule 48(b) dismissal date for a period of approximately thirty-two (32) days to permit the parties to resolve this matter by plea by appearing before Judge Arcara. By this affidavit, the government, with the consent of counsel for the defendant, moves for an exclusion of speedy trial time from and including April 2, 2018, to and including May 3, 2018, pursuant to Title 18, United States Code, Sections 3161(h)(7)(A) and (h)(7)(B)(iv), and Rule 5.1 of the Federal Rules of Criminal Procedure.

5. The defendant's interest in continuity of effective assistance of counsel and in obtaining a lesser sentence outweighs the interest of the defendant in a speedy trial. In addition, obtaining a guilty plea will conserve resources and avoid the time and expense of trial and appeal combined with the certainty of conviction. Based on the foregoing representations, the exclusion of time in this matter is in the interest of justice and not contrary to the interests of the public and the defendants in a speedy trial pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv), and Rule 5.1 of the Federal Rules of Criminal Procedure.

WHEREFORE, for all of the foregoing reasons, it is respectfully requested that the Rule 48(b) dismissal date be set for May 3, 2018, and that the time from and including April 2, 2018, to and including May 3, 2018, be excluded from the Speedy Trial Act.

s/BRENDAN T. CULLINANE
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
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716/843-5875
Brendan.Cullinane@usdoj.gov

Subscribed and sworn to before me

this 30th day of March, 2018.

s/KATHERINE M. REBISZ
COMMISSIONER OF DEEDS
In and for the City of Buffalo, New York.
My Commission Expires Dec. 31, 2018.